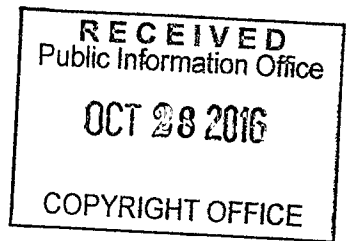


Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.



In re

Determination of Royalty Rates and Terms for
Making and Distributing Phonorecords
(Phonorecords III)

Docket No. 16-CRB-0003-PR
(2018-2022)

Received

OCT 28 2016

ORIGINAL

Copyright Royalty Board

MOTION TO ADOPT SETTLEMENT INDUSTRY-WIDE

The National Music Publishers' Association, Inc. ("NMPA"), Nashville Songwriters Association International ("NSAI") and Sony Music Entertainment ("SME") (collectively, the "Parties") hereby notify the Copyright Royalty Judges that they have reached a settlement in the above-captioned proceeding (the "Proceeding") relating to rates and terms under Section 115 of the Copyright Act for physical phonorecords, permanent digital downloads and ringtones presently addressed in 37 C.F.R. Part 385 Subpart A (the "Subpart A Configurations"). Pursuant to such settlement:

- (1) SME hereby withdraws its objection to the settlement in this Proceeding that the Judges previously published in the *Federal Register* (the "UMG/WMG Settlement"), 81 Fed. Reg. 48,371 (July 25, 2016), insofar as it extends the late fee provision specified in 37 C.F.R. § 385.4. Comments and Objection of Sony Music Entertainment Concerning Proposed Settlement (Aug. 24, 2016).
- (2) NMPA and NSAI hereby withdraw their Response to SME's Comments and Objection Concerning Proposed Settlement (Exhibit A to their Motion for Leave to Respond to Sony Music Entertainment's Comments and Objection Concerning

the Proposed Settlement (Aug. 30, 2016), which was granted by the Judges on October 18, 2016).

- (3) The Parties hereby respectfully request that the Judges adopt the UMG/WMG Settlement industry-wide as the statutory rates and terms for all Subpart A Configurations for the coming rate period.
- (4) SME hereby withdraws from the Proceeding except as to prosecution of this settlement, or if the UMG/WMG Settlement is not adopted industry-wide, any other matters respecting the adoption of royalty rates and terms for Subpart A Configurations.

I. The Parties

All of the Parties filed petitions to participate in this Proceeding.

SME is one of the largest recorded music businesses in the United States. As described further in SME's Opposition to the Copyright Owners' Motion to Deny, in Part, the Petition to Participate of SME (Aug. 3, 2016), each year SME creates, manufactures and/or distributes a large volume of sound recordings pursuant to mechanical licenses and makes substantial royalty payments tied to Section 115 of the Copyright Act.

NMPA is a trade association representing the U.S. music publishing and songwriting industry. Musical works owned or controlled by NMPA members account for the vast majority of the market for musical work licensing in the U.S. NSAI is a trade organization serving songwriters of all genres of music, including songwriters who directly publish and license their own music.

Concurrent with the settlement, SME and NMPA have separately entered into a memorandum of understanding providing for the continuation of certain licensing processes and late fee waivers.

II. Nature of the Settlement

The Parties have agreed that the royalty rates and terms provided in the UMG/WMG Settlement should be applied industry-wide to all licensees under Section 115. The UMG/WMG Settlement calls for continuation of the rates and terms presently set forth in 37 C.F.R. Part 385 Subpart A for the rate period at issue in the Proceeding, with one minor conforming update.¹ The Judges should implement the UMG/WMG Settlement by retaining current Subpart A with only the conforming update identified in footnote 1.

III. Adoption of the Settlement by the Copyright Royalty Judges

Pursuant to 17 U.S.C. § 801(b)(7)(A), the Copyright Royalty Judges have the authority “[t]o adopt as a basis for statutory terms and rates . . . an agreement concerning such matters reached among some or all of the participants in a proceeding at any time during the proceeding.” Such an agreement may serve as the basis of proposed regulations if other interested parties who “would be bound by the terms, rates or other determination” set by the agreement are afforded “an opportunity to comment on the agreement,” *id.* § 801(b)(7)(A)(i), and provided that, in the event a participant in the proceeding who would be bound by the settlement raises an objection, the Judges conclude that the rates and terms set forth in the settlement agreement “provide a reasonable basis for setting statutory terms or rates.” *Id.* § 801(b)(7)(A)(ii).

¹ As the Judges acknowledged in their *Federal Register* notice concerning the UMG/WMG Settlement, in the current 37 C.F.R. § 385.4, the cross reference to § 201.19(e)(7)(i) should be updated to refer to § 210.16(g)(1). *See* 81 Fed. Reg. at 48,732.


The Judges have previously published the UMG/WMG Settlement for comment. 81 Fed. Reg. at 48,371. The Judges' *Federal Register* notice announcing the UMG/WMG Settlement specifically solicited comments concerning the question "whether they should apply the rates and terms in the partial settlement to all copyright owners and licensees." 81 Fed. Reg. at 48,372. The Judges have also now solicited reply comments, thereby providing a further opportunity for third parties to address application of the UMG/WMG Settlement industry-wide. 81 Fed. Reg. 71,657 (Oct. 18, 2016). Accordingly, the condition specified in Section 801(b)(7)(A)(i) for the adoption of the Parties' settlement has already been satisfied.

In response to the Judges' original notice, the American Association of Independent Music ("A2IM") filed timely comments "urg[ing] the Judges to approve the partial settlement and adopt the proposed rates and terms for all affected copyright owners and licensees." Comments of A2IM in Support of Proposed Settlement (Aug. 24, 2016). George Johnson has filed various documents opposing the UMG/WMG Settlement. However, Mr. Johnson is an outlier in this respect. With the exception of Mr. Johnson, the UMG/WMG Settlement now has the support of essentially the entire recorded music, music publishing and songwriting industries. It is beyond any doubt that a settlement with such broad support is "reasonable." 17 U.S.C. § 801(b)(7)(A)(ii).

Encouraging settlements was a key goal of Congress when it adopted the current rate-setting procedures. H. Rep. No. 108-408, at 30 (Jan. 30, 2004) ("the Committee intends that the bill as reported will facilitate and encourage settlement agreements for determining royalty rates"). Accordingly, the Parties are pleased to have reached their settlement, and respectfully request that the Judges promptly adopt the UMG/WMG Settlement industry-wide as the statutory rates and terms for Subpart A Configurations for the coming rate period.

October 28, 2016

Respectfully submitted,



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